

This letter discusses the new regulatory provisions regarding sellers of floor coverings. See 86 Ill. Adm. Code 130.2101. (This is a GIL.)

June 5, 2002

Dear Xxxxx:

This letter is in response to your letter received May 2, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

Carpet that is sold installed by using tacks, staples, or tacking strips is now treated in the same manner as carpet that is sold installed by gluing it down. All of these methods of installation are considered permanent installations of personal property into real estate. If you pay tax to your supplier at the time of purchase than you have met your obligation.

With the above statement, we feel that we are exempt from sales tax at the retail level. If you have any questions please call.

For your information, we have enclosed a copy of the Department's new regulation regarding "Sellers of Floor Coverings." See 86 Ill. Adm. Code 130.2101, enclosed. As you can see, sellers who make sales of floor coverings to users in retail sale situations incur Retailers' Occupation Tax liability on their gross receipts from such sales. Sellers who make sales of floor coverings to users in construction contract situations incur tax liability on the cost price of the floor coverings.

Subsection 130.2101(c) describes retail sale situations. In general, a sales contract that does not require the seller (or the seller's representative) to permanently affix the floor covering to real estate constitutes a "sale at retail." However, in some situations, the seller (or seller's representative) will permanently affix the floor covering to real estate. In that case, the transaction remains a retail transaction if the "safe harbor" rule is followed. The "safe harbor" rule provides that

"[a] contract or similar document that provides that the seller (or the seller's representative) will install the floor covering by permanently affixing it to real estate evidences a 'sale at retail' where the contract or similar document demonstrates that the seller and the customer agreed to the installation charge separately from the selling price of the floor covering. The evidence required to be maintained by the seller to demonstrate that the seller and the customer agreed to the installation charge separately from the selling price of the floor covering is a contract or similar document that is signed by the customer and that sets out the following items:

selling price of floor covering
(plus) sales tax

subtotal
(plus) installation charges
total

(customer's signature)"

Subsection 130.2101(d) describes construction contract situations. Construction contractors who permanently affix floor coverings to real estate under the terms of construction contracts incur tax liability based on their cost price of the floor covering and materials that they affix to real estate. In a construction contract situation, the construction contractor does not incur Retailers' Occupation Tax liability on his gross receipts from sale. Rather, the construction contractor incurs tax based on his cost price of the floor covering and materials transferred to his customer under the terms of the construction contract. The "safe harbor" rule with regard to construction contract situations provides that

"[a] contract or similar document that provides that the seller (or the seller's representative) will install the floor covering by permanently affixing it to real estate evidences a "construction contract" where the contract or similar document demonstrates that the seller and the customer did not agree to the installation charge separately from the selling price of the floor covering. The evidence required to be maintained by the seller to demonstrate that the seller and the customer did not agree to the installation charge separately from the selling price of the floor covering is a contract or similar document that sets out the following items:

selling price of floor covering,
including installation
total

(presence or absence of customer's signature is immaterial)"

We hope that this regulation is helpful in providing information regarding how to properly document the kind of carpet transactions you engage in.

The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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